IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3721 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SALIM @ MUNNA OSMAN

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 3721 of 2001

MR PRAVIN GONDALIYA for Petitioner No. 1

RULE SERVED for Respondents No. 1,3

MR S.S.PATEL, AGP for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 09/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the

Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), District Magistrate, Junagadh, vide order dated March 19, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention order dated March 19, 2001 manifest that the petitioner is a prohibition bootlegger within the meaning of Section 2(b) of the Act and as two cases for commission of the offences under the Prohibition Act are registered against the petitioner. Besides this, statements of four witnesses are recorded in an unregistered offences, and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act are exercised by the detaining authority by not disclosing the names of the witnesses and accordingly detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Mr. P.S.Gondalia, learned advocate for the petitioner has restricted his arguments only on the aspect of delay in recording the order of detention without recording satisfactory explanation on the part of the detaining authority and therefore, order of detention is vitiated. In order to substantiate his arguments he has drawn my attention on registration of the two cases against the petitioner which are of December 26, 2000 and after three months thereafter, the order of detention came to be passed on March 19, 2001 and therefore, there is a delay of three months in passing the order of detention which is not explained by the detaining authority. He, therefore, urged to allow the petition by quashing and setting aside the order of detention and setting the petitioner at liberty forthwith.

5. So far as privilege claimed under Section 9(2) of the Act is concerned, according to the learned counsel it cannot be said to be genuine in the absence of reply affidavit filed on behalf of the detaining authority. Therefore, on both these grounds, the order of detention is vitiated and he urged that the petition may be allowed by quashing and setting the impugned order of detention

and setting the petitioner at liberty forthwith.

6. Mr. S.S.Patel, learned AGP has appeared on behalf of the respondent State has opposed the petition. He, however, does not dispute the factual aspect that the order of detention is passed after a period of three months after the registration of the two cases against the petitioner for commission of the offences under the Prohibition Act. He, however, urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court in this regard.

7. I have considered the submissions advanced by the learned advocates appearing for the parties. I have perused the averments made in the petition and the documents annexed therewith. I have also considered the impugned order of detention passed by the detaining authority.

8. There is no manner of doubt that both the offences are registered against the petitioner for commission of the offences under the Prohibition Act on December 26, 2000 whereas the impugned order of detention came to be passed on March 19, 2001, therefore, there is a delay of three months in passing the impugned order of detention.

9. In the case of ANAND PRAKASH V. STATE OF UP, AIR 1990 SC 516, it has been observed by the Supreme Court that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

10. A similar view is also expressed by this Court in the case of ELESH NANDUBHAI PATEL V. COMMISSIONER OF POLICE, AHMEDABAD CITY, 1997 (1) GLH 381. Applying the principles enunciated by the Supreme Court and this Court in the aforesaid two judgements to the facts of the present case, it is clear that the present case is identical to the case referred to above. In the present case also order of detention came to be passed after a period of three months and the date of registration of the offence against the petitioner, and therefore, there is a delay of three months in passing the impugned order of detention which is not explained by the detaining authority. Therefore, on the ground of delay, the order of detention is vitiated.

11. Besides this, the detaining authority has claimed the privilege under Section 9(2) of the Act by not disclosing the identities of those anonymous witnesses

whose statements are recorded in an unregistered cases. It may be noted that the detaining authority has not filed any affidavit in reply and, therefore, I am of the opinion that the privilege claimed by the detaining authority cannot be called genuine in the absence of affidavit in reply and therefore, on the aforesaid two grounds, the order of detention stand vitiated and the petition deserves to be allowed by setting the petitioner at liberty forthwith.

12. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated March 19, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*